

# EXHIBIT 5

**Elias, Brad**

---

**From:** Elias, Brad  
**Sent:** Friday, November 19, 2010 5:23 PM  
**To:** Steven J. Rosenwasser  
**Subject:** 30(b)(6) Meet and Confer

Steven,

We write on behalf of Merrill Lynch, Pierce, Fenner & Smith to confer in good faith on the deposition that you have noticed for December 10, in Atlanta, Georgia. As we have previously informed you, Merrill Lynch has no additional information on the topics that you have noticed that is not contained in the documents that it produced in response to your fourth document requests. Merrill Lynch is willing to stipulate to this fact and to the fact that it does not currently have a position on whether any of the conduct alleged in those investigations ever occurred. There is therefore no reason for Merrill Lynch to spend time and money preparing a witness to simply read aloud the contents of documents that are already in your possession. Accordingly, Merrill Lynch asks that Plaintiffs agree to accept this stipulation and withdraw the notice. To the extent Plaintiffs' do not agree, we will be seeking a protective order from the court to prevent your burdensome and unnecessary discovery requests.

Regards,

**Brad M. Elias**  
**O'Melveny & Myers LLP**  
7 Times Square  
New York, NY 10036  
[belias@omm.com](mailto:belias@omm.com)  
(212) 326-2248

*This message and any attached documents contain information from the law firm of O'Melveny & Myers LLP that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.*